IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION No. 16233 of 2004

Between:

B.Bhaskara Rao S/o. of Satyanarayana, aged about 36 years,
Residing at D.No.40-13-14, Gopal Nagar 6th Line,

Ongole Prakasam District.

..... PETITIONER

AND

Jan Shikshan Sansthan (Scheme of Government of India)
Door No.37-1-169 (72A) Aluri Complex, Near RTC Bus Stand, Ongole
Prakasam District -532 002 Represented by its In-Charge Director

V.Siva Sankar Rao.

.....RESPONDENT

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate order, direction or a writ more particularly one in the nature of a writ of Mandamus to quash the proceedings R.C.No.1/JSS/2004 dated 19.8.2004 issued by the respondent terminating the services of Assistant Programme Officer and further direct the respondent to continue the petitioner in service as Assistant Programme Officer in the service of the respondent.

Counsel for the Petitioner: MR.KOKA RAGHAVA RAO

Counsel for the Respondent: MR B.ADINARAYANA RAO

The Court made the following:

ORDER:

At the request of the learned counsel appearing for the both sides, the main writ petition is taken up for disposal.

The present writ petition is filed to quash the proceedings in RC.No.1/JSS/2004, dated 19.08.2004 issued by the respondent terminating the services of the petitioner as Assistant Programme Officer and with consequential direction to the respondent to continue the petitioner in service.

The brief averments in the affidavit filed in support of the petition for the disposal of the present writ petition may be stated as follows:

The respondent is a Society registered under the Societies Registration Act, sponsored by the Ministry of Human Resource Development, Government of India and fully financed by the Government of India. The petitioner was selected at an interview held on 04.08.1997 by the Board and posted as an Artist-cum-Projectionist by orders dated 11.08.1997 on a consolidated salary of Rs.3,395/-. His services were regularized after completion of probation with effect from 18.08.1999 on regular pay scale. As per the said proceedings, it is clear that the petitioner can leave the institution after submission of written intimation one month in advance and resignation letter. It is pertinent to note that no such right to terminate the services of the petitioner with one month notice has been reserved by management. In the year 2002, the writ petitioner was promoted to the higher post of Assistant Programme Officer. During the year 2000 the respondent society has been transformed into a Society under the Societies Registration Act. The entire staffs of the erstwhile Shramik Vidyapeet (for short 'SVP') have been continued in service of the respondent society with the same service conditions. Therefore, the change does not affect his service regularized in the year 1999 and the promotion given in the year 2002. The Board of Management in its meeting held on 13.02.2004 has resolved to put all the staff working on contract basis with effect from 01.03.2004. As per guide lines at Chapter-8, paragraph 8.4, only

the existing vacancies have to be filled on contract basis, therefore, the resolution of the Board of Management dated 13.02.2004 is illegal. The employees are pressurized to sign the agreement for the contractual service with threat that if they fail to sign, they will not be continued in service. Believing the oral promises that he would be continued in service and also he would be given promotion, he signed in the agreement for the contractual service. The petitioner never been put on notice by any irregularities committed by him. There is no three months notice as contemplated or even a notice to show cause why his services should not be terminated. Hence the present writ petition.

The respondent filed counter affidavit stating that the writ petition is not maintainable. The petitioner services were taken on contractual basis for a specific period of two years by a contract of service dated 01.03.2004. The contract itself provides that it is terminable at one month notice and accordingly the contract was terminated after paying the petitioner one month emoluments in lieu of notice which is also provided by the contract. The respondent is a non-governmental organization and registered society. It has been selected by the Ministry of Human Resource Development, Government of India for implementing the scheme for Jan Shikshan Sansthan (for short 'JSS'). The Department of Education of the Ministry of Human Resource Development of the Government of India framed a scheme called Shramik Vidyapeeth (SVP) for disseminating non-formal adult and continuing vocational education. The scheme was entrusted area-wise to register non-governmental organizations for a period of three years and the SVPs were free to engage their own employees and fix their own pay scales subject to the ceiling on them by the guidelines. The employees were not cadre born on any permanent service as the period of SVP itself was three years and at the end of three years period the SVP may be entrusted to some other non-governmental organization, which could choose its own personnel. Therefore, the selection of the petitioner and the promotion thereafter are not relevant to the present case. The SVP itself was a temporary

phenomenon of three years and there can be nothing like regularization as there are no permanent posts or cadres. In July, 2002 SVP, Ongole, which is renamed as Jan Shikshan Sansthan (JSS) was handed over to non-governmental organization presently implementing the scheme for a period of three years. Under the guidelines of JSS, any service can be engaged on contractual basis only and the total emoluments shall not be more than the fixed ceilings. All the persons earlier engaged by SVP and who expressed their willingness were continued to be engaged after conversion of SVP into JSS. There is absolutely no continuity of service as there are no permanent posts or cadres. The staffing pattern and amount of emoluments were to be fixed by the non-governmental organizations, running the SVP or later JSS. The relation between the petitioner and the respondent is determined by the contract of service dated 01.03.2004. As per the proceedings dated 24.12.2003, the Government of India prepared action plans for the respondent to engage all employees on consolidated basis and restricted the total emoluments to the ceiling limit prescribed in the guidelines. In pursuance of the said proceedings, the previous selections were not made as per guidelines. There are no records to show that the duly constituted Selection Committee made the selection. The minutes book was also tampered. The selection committee was formed without GOI/State Government Nominee and interview letters were sent to the employees. The matter was reviewed and a resolution was passed. Thereafter, pursuant to the same, the persons earlier engaged with Board of Management on consolidated basis with effect from 01.03.2004 for a period of two years entered into contracts. All the staff members working in the respondent Society were signed on the contract agreement with Board of Management. The petitioner also signed on the agreement along with other staff voluntarily. The petitioner has resorted to several omissions and commissions and several complaints have been received against him. Therefore, the contract of the petitioner is terminated. On the complaints received from various persons, the Chair person ordered to enquire into the matter and submit a report. The Committee

conducted enquiry, but the petitioner did not attend the enquiry willfully. On the report of the Committee, the Board of Management has taken a decision to terminate the services of the writ petitioner. Accordingly, the impugned proceedings have been issued. Hence the respondent prays to dismiss the writ petition.

The petitioner filed reply affidavit stating that the allegations in the counter affidavit that the writ petition is liable to be dismissed on the ground that the services of the petitioner were taken on contractual basis for a specific period of two years by contract of service dated 01.03.2004 are untenable. The fact that the organization is fully financed by the Government of India is not denied in the counter. The averment that the writ petition is not maintainable for enforcing a contract and that the respondent is a non-governmental organization and registered society is devoid of merit as the Government of India selected this organization for implementing the scheme of the Government of India is also untenable. It is further stated that the writ petitioner has acquired right to hold the post and the respondent management came forward with a false story that an enquiry has been conducted and ample opportunity is given. The allegation that he involved in criminal cases and collected funds from the field level workers and not deposited the same in the account of the respondent organization are all false. With regard to the said allegation, he has not been given any notice at anytime. He has been attending the office till 09.07.2004. The signatures on the contract of service are obtained by force. Therefore, he prays to allow the writ petition.

Jan Shikshan Sansthans (JSSs) are non-formal vocational educational institutions for adults. With an object to improve the quality of life of beneficiaries by linking literacy with vocational training, the scheme has been framed. JSSs are registered Societies set up as non-formal organization and a Board of Management looks after the affairs of the JSSs. In the year 1997 the Department of Education of Ministry of Human Resource Development of the Government of India framed a scheme called Shramik Vidyapeeth (SVP) for disseminating non-formal adult and continuing vocational

education. Originally the scheme was entrusted area-wise to register non-governmental organizations for a period of three years. It is made it clear in the counter affidavit that SVPs are free to engage their own employees and fix their own pay scales subject to ceiling imposed on them by the guidelines. It is also not denied or disputed that the employees were not cadre borne on any permanent service as the period of SVP itself was for a period of three years and at the end of the three years, the SVP may be entrusted to some other non-governmental organization, which could choose its own personnel. The writ petitioner was initially appointed by the Director of the respondent on 11.08.1997 as an Artist-cum-Projectionist on a consolidated salary. Thereafter, through the proceedings dated 18.08.1999, the respondent regularized the services of the petitioner as an Artist-cum-Projectionist.

The scheme of JSS framed its own guidelines with regard to objectives, functions, for management, planning and programming. As per clause 8.3 of the scheme, the members of the staff are employees of Sansthan/Parent Organisation, as the case may be, and are not the employees of the Government of India. The role of the Government of India is strictly limited to providing the registered society with financial assistance according to the approved financial pattern. This too, it provides strictly on a temporary basis and is at liberty to withdraw such assistance without assigning any reason or issuing any notice. As per clause 8.4, the members of the staff of JSS shall be engaged on contract basis with consolidated emoluments, as may be fixed by the Board of Management. This will be effective from the date of issue of the guidelines by the Government of India. All the existing vacant positions shall be filled only on contract basis.

The case of the petitioner that he was duly selected by the respondent, whereas the respondent contended that appointment and regularization do not confer any right to the writ petitioner since he was not selected by the duly constituted selection committee and

the selections that took place in 1997 and 1999 were not done as per guidelines. The Selection Committee was framed without Government Nominee. The Office Management (National Minority Education Society, Guntur) made the selection of the staff of the respondent. Therefore, the above facts, which are not in dispute, indicate that the scheme of the Central Government was being entrusted area-wise to register non-governmental organizations for a period of three years. That non-governmental organization is free to engage their own employees and fix their own pay scales subject to the guidelines in the scheme framed by the Government. As per Clause 8.2, the structure and shape of the staff pattern will fall within the purview of the Board of Management. The decisions with regard to the number of employees, their emoluments, their duties and functions and their designations will rest entirely with the Board of Management. Therefore, an employee recruited and even if selected on a regular basis, cannot claim any right to continue him after a change in the non-governmental organization to which the Government entrusted the scheme. The present Board of Management of the respondent society neither selected the petitioner nor regularized the services of the petitioner as an Artist-cum-Projectionist. The Board of Management of the erstwhile SVP was made by the Office Management i.e. National Minority Education Society, Guntur. The writ petitioner has not filed any document to show that the present Board of Management of the JSS recognized his services, and therefore, he continued to be a permanent staff of the respondent institution.

Be that it may be, by an agreement of service dated 01.03.2004 the writ petitioner entered into contract of service with the Board of Management of the respondent for engagement as Assistant Programme Officer on a contract term for a period of two years with effect from 01.03.2004. No doubt it is specifically stated in his affidavit that he signed in the said contract of service on an oral promise that he would be continued in service and also he would be given promotion. In the additional affidavit, it is stated that the signature has

been obtained in the contract service forcibly, whereas the contention of the respondent is that the petitioner voluntarily entered into the contract of service of agreement dated 01.03.2004. It is a serious deputed question of fact, which cannot be decided by this Court in exercising the power under Article 226 of the Constitution of India.

The writ petitioner claims that the agreement of contract of service was forcibly taken, but as on today, no challenge has been made by the writ petitioner with regard to that agreement of contract of service. As per clause 9 of the Contract of Service, the service of the appointee may, during the period of this contract, be terminated by the JSS at any time by 30 days notice in writing. Provided always that the JSS may in lieu of the notice herein provided give the appointee a sum of equivalent to the amount of his consolidated pay for one month. Invoking the said clause, the contract was terminated by the respondent after paying the petitioner one month emoluments in lieu of notice which is also provided in the contract. No doubt the impugned order shows that several complaints were received against the writ petitioner and all the complaints were placed before the Chair person of Board of Management, and the Board of Management ordered the Vigilance and Grievance Committee to enquire into the matter and after an elaborate Enquiry and giving opportunity to the petitioner to defend himself, submitted its report. Basing the recommendations of the Committee and invoking the clause-9 in the Agreement of Contract of Service, the services of the petitioner were terminated. The petitioner was given a show cause notice dated 26.07.2004. It is not stated in the counter that the writ petitioner has acknowledged the notice, but at the same time the show cause notice was affixed to the notice board of the office. The committee conducted enquiry on 13.07.2004, and the writ petitioner, according to the averments in the counter, did not attend the said enquiry willfully. But according to the petitioner, he was not allowed to enter into the office and not allowed to sign in the attendance register from 12.07.2004. It is not the case of the writ petitioner that neither he has knowledge about the show cause notice or conducting of an enquiry

on 13.07.2004. Basing on the report submitted by the Enquiry Committee, the Board of Management accepted the recommendations and invoked one of the clauses in the agreement of contract of service and terminated the services of the writ petitioner. In my considered opinion, the order under challenge does not suffer from any incurable legal infirmities so as to call for interference by this Court as the order is passed in accordance with the agreement of contract of service.

Be that it may be, in my considered opinion, the writ petition is not maintainable inasmuch as the society of the respondent is not constituted by a statute though 100% funds of the society are funded by the Government of India. The Society is registered under Societies Registration Act in order to fulfil the objectives of the scheme framed by the Government of India.

Since serious disputed questions of fact with regard to conducting of enquiry and appointment of petitioner contrary to the scheme framed by the Central Government and for every three years a non-governmental organization will take care of the institution, the petitioner cannot claim any right to continue in the post for which he was selected. Therefore, the claim of the petitioner that he is a regular employee of SVP cannot be countenanced.

Viewed from any angle, the writ petition is devoid of merit and is liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

Dated: 15.12.2004

Dsr

ASSISTANT REGISTRAR

To:

1. The Incharge Director,

Jan Shikshan Sansthan,

(Scheme of Government of India)

Door No.37-1-169 (72A)

Aluri Complex, Near RTC Bus Stand,

Ongole, Prakasam District-532 002.

2. Two CD copies.